1952. K **File No.** O. Paragana and Kulkarni watan (Abolition) 52

Legal Dept.

A. **BRANCH**

sd. 10/7

P. 20(E)

Subject:— Opinions under the Bombay Paragana and Kulkarni Watan (Abolition) Act- 1950

File No. O. Paragana and kulkarni watan (Abolition) 52

Gen. 194 a.

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Section 55 of the L.R. Code and under

Office of the R.L.A.

The Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950, came into force on 1st May 1951. Since that day under section 3 of the Act all Paragana and Kulkarni Watans are abolished. It is true that in this case Shri Hari Martand Deshpande had applied for re-admission of the cash allowance on 26th February 1951 and that on the date of the coming into force of the Act his application was pending before the Collector. But such applications are not saved under the Act. As pointed out by the R.L.A. in para 2 of his opinion No. 16076, dated 10th October 1951, (subsequently followed in Opinion 17813, dated the 9th November 1951, and No 20488 dated 28.12.51), the proceedings saved are only those in respect of any obligation or liability already incurred before the coming into force of the Act and pending in Court. Application pending before Revenue Officers are not saved and they will be deemed to have abated. The View expressed by Under Secretary, Revenue Department that the allowance cannot be re-admitted now is correct.

Sd/- V.M.Lad

o.c. 22/9/52

Remembrancer of Legal Affairs.

U.R. to R.D. No. 15650-A , dated the 23rd September 1952.

Mjr/13/6

4 Cs.

LEGAL DEPARTMENT

Sale of Kulkarni Watan Lands. Bombay Paragana & Kulkarni Watans (Abolition) Act, 1950

Under section 14(3) of the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950, nothing in Sub-sections (1) and (2) shall be deemed to affect.

(a) any abeligation or liability already incurred before the coming into force ofthis Act:

(b) any proceeding in respect of such obligation or liability;

(c) anything done in the course ofsuch proceedings in any court on the aforesaid date and any such proceeding may be continued as if this Act had not been passed.

The attachment of immoveable property creates no charge or lien upon the attached property. It merely prevents and avoids private alienations and it does not confer any title on the attaching creditor. But an attaching creditor acquires by virtue of the attachment a right to have the attached property kept in custodi legis for the satisfaction of his debts and an unlawful interference with that right constitutes an actionable wrong (see Mulla's Civil Procedure Code, pp.261-62) Under section 5 of the Bombay Hereditary Offices Act, a life interest in a watan land can be sold in execution of a money decree against the holder thereof. (See Shivramv. Mahadev I.L.R.) 37 Bom 81). In the present case, the Kulkarniki Watan land was attached in execution of such decree prior to the coming into force of the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950. Consequently, the judgment creditor had a right to get the attached Kulkarniki watan land sold in execution of the decree for satisfaction of his dues. It would, therefore, be possible to argue that this right ofthe judgment creditor is saved by section 14(3) of the Bombay Paragana and kulkarni Watans (Abolition) Act, 1950, and he is entitled to proceed with the executionof the decree against the kulkarniki land which has been attached. As regards a sale under a decree of the court, there is no warranty of title either by the decree holder or by the court and what passes to a purchaser at a court sale is the right, title and interest of the judgment debtor whatever that interest may be. In

Other words, a purchaser at a court sale buys the property with all risks and with all defects in the judgment debtor's title except where it is found that the judgment debtor has no saleable interest at all. In the latter case, the purchaser may apply to have the sale set aside under rule 91 of Order 21 and he may then apply under rule 93 for return of the purchase money. If by virtue of section 3 of the Bombay Paragana and Kulkarni Watans (Abolition) Act, the interest of the judgment debtor in the kulkarniki watan land is extinguished, there would remain no interest of the judgment debtor to be sold. As stated above, the auction pruchaser gets the right, title and interest of the judgment debtor and if the judgment debtor has no saleable interest, all that the purchaser wouldbe entitled to would be to claim refund of the purchase money. Consequently, even if the saleis proceeded with and the land is ultimately sold, the rights of Government by reason of resumption under section 3 of the Bombay Paragana and Kulkarni Watans (Abolition) Act would remain unaffected and it would not be necessary for Government to file any suit for a declaration of Government's interest in the land as a advised by the District Government Pleader, Bijapur . Since the Civil Judge, Senior Division, has directed that the sale should be proceeded with, the Collector may continue the sale proceedings and it shouldbe left to the auction purchaser to have his title to the land decided by the Civil Court. The collector shouldin the proclamation of sale bring to the notice of the intending purchaser the provisions of section 3 of the Paragana and Kulkarni Watans (Abolition) Act and should make it clear that whatever interest the judgment debtor had in the land has been extinguished.

Sd/- J...Dhurandhar
27/3

e.c

Additional Secretary to Government

U.R. to R.D. No. 4640, dated the 27th March, 1952.

Mjr/13/6

4 Cs.

Legal Department.

Kulkarni cash allowance.

The kulkarni commutation cash allowance in question is a pension within the meaning of the Pensions Act, 1871. Under rule 14 of the rules made under the Act the mamlatdar is empowered to strike off a pension in respect of which no application has been made for 6 years. Under rule 15 the Collector is empowered to readmit it if it is held under a permanent hereditary title, as the present allowance is held, if an application for the prupose is made within 12 years. The periods prescribed in the two rules do not extinguish the title of a claimant. It is open to a claimant to obtain a declaration in a Civil Court regarding his title to the allowance. Although in the present case, the allowance in question was in arrears since 1923-24, it appears that the holder was a minor and attained majority in 1929. It is true that he should have applied for the readmission of his name to the pensionbbefore 1941. It is alleged that an application on his behalf was made in 1935 and an inquiry was held. The papers of the inquiry are missing and the applicant cannot be held responsible for the loss of the papers. He has adduced oral evidence of persons who were examined in the inquiry. As stated by the D.C.P., Sholapur, there are no grounds for discarding this evidence, and, therefore, no reasons for holding that the claimant is not entitled to have his name entered in the pensions register. The action taken by the Collector is correct nd may be approved.

Sd/- J.R.Dhurandhar
8/5

o.c.

Additional Secretary to Government.

U.R. to.R.D., No. 7358, dated the 9th May 1952.

Mjr/13/6

4 Cs.

Legal Department.

lienation of Watan
ombay Paragana &
ulkarni Watans
Abolition) Act, 1950

ections 3(3) and
4(2)

The proviso to section 3(3) of the Bombay Paragana and Kulkarni Watans(Abolition) Act, 1950, prävided that the resumption shall not affect the validity of any alienation of such watan land when such alienation is made in accordance with the provisions of section 5 of the Watan Act or the right of an alienee thereof or any person claiming under or through him. Under section 5 of the Watan Act an alienation of watan property to a non-watandar without the previous sanction of Government is void in its inception against the heirs of the alienor and the life estate which the non-watandar possesses would come to an end on the death of the alienor watandar and the heir of the alienor wouldbe entitled to succed to the property. The alienation which is saved under the proviso to section 3(3) is the alienation out and out of the watan land itself and notof the life interest of the watandars therein. Any life interest parted comes to an end with the resumption of the watan. Section 4(1) provides that a watan land resumed shall be re-grantedto the holder of the watan to which it appertained on payment of the occupancy price within two years from the date of coming into force of the Act and the holder shallbe deemed to be an occupant within the meaning of Bombay Land Revenue Code etc. The alienees who are non-watandars wouldnot be entitled to the regrant of the resumed land. Under section 4(1) the regrant of the resumed land shouldbe made in favour of the Watandar, Shri Deshmukh, on his paying the occupancy price, and during the life time of Shri Deshmukh, the alienees' right to hold the land would not be affected. The occupancy of the land so regranted would be on new and impartible tenure under section 4(2)

Sd/- J.R.Dhurandhar
Additional Secretary to Government

o.c.

U.R. to R.D., No. 7948, dated the 13th May 1952.

Mjr/13/6

Legal Department.

nbay Paragana
d Kulkarni
tans (Abolition)
t, 1950

cts, 3(3)
d 7(1) and (2)

The first question raised for consideration is whether the term "holder of the watan" in section 4 ofthe Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950, includes a lawful alienee of the watan. The question has been raised by the Collector of Dharwar in his No.W.T.N.(S) 1692 dated 18th June 1951 and the Collector of Belgaum in his No.W.T.N.S.R./2905 dated 28th June 1951. The Collector of Dharwar states that it is doubtful whether the word 'holder' would include a person (non-watandar stranger) who is in lawful possession of the watan land by virtue of an alienation duly sanctioned by Government under section 5 of the Watan Act. The Collector of Belgaum states that the word 'holder' appears to exclude a stranger in possession of the watan land lawfully in accordance with the provisions of the Watan Act. There appears to be some misconception in regard to this question. If an alienation of the watan land is sanctioned by Government under section 5 of the Watan Act, the land would ordinarily cease to be a part of the watan. The provise to section 3 of the Pargana & Kulkarni Watan's (Abolition) of an alienee of such land and the resumption which is the result of clause (3) of section 3 does not affect his rights. No question of a regrant to him arises under section 4 and no question will also arise whether he should be deemed to be a holder or not for the purpose of section 4. A person who is, however, a lawful alienee of the watan land in consequence of the Commutation Settlement, as in the case of Pedder Settlement in Gujarath, is however a holder of the watan land alienated in his favour. As in the case of such alienation, the land still retains its watan character inspite of the alienation.(see Bai Jadav Narsilal I.L.R. 25 Bom. 470).

2. As regards the second question, it is clear that the words "the sum so payable annually" in section 7(2) of the Act clearly mean the sum equal to one third of the total amount of the emoluments payable in cash to the representative watandar referred to in sub-section (1) of section 7. No question at all arises regarding the interpretation of the words "the sum so payable annually" in section 7(2).

Sd/- J.H.Dhurandhar
O.C. 19/5

Additional Secretary to Government.

U.R. to R.D., No. 8429, dated the 20th May 1952.

Mjr/13/6
4 Cs.

Legal Department.

Deshpande Watan.

Survey Nos. 56/1 and 56/2 of the village of Kusgaon, taluka mawal, were Deshpande Watan Lands. It appears that they were mortgaged in 1867 and were in the possession of the mortgag e who received rent from the tenants. In the Revenue Records they have been entered in the name of the tenants as persons in actual possession. In 1951 one Sawlaram Deshpande applied to have the land entered in his name. He claimed to be the heir of the mortgagee. No person claiming to be the heir of the original watandar has come forward to claim the watan. Swalaram's application was rejected. The Collector states that as there is no heir of the watandar, the lands have escheated to Government. The correct legal position is that there is no heir of the watandar, the watan has become extinct and no question of the resumption of the watan or the regrant of the land to the holder arises under the Bombay Pargana and Kulkarni Watans (Abolition) Act, 1950. In view of the long possession of the tenants, however, it will not be desirable to evict them. The lands should be treated as Khalsa or unalienated and full assessment should be recovered from the persons in possession.

Sd/- J.R.Dhurandhar

O.C. 3/6

Additional Secretary to Government

U.R. to R.D. No. 9371 , dated the 5th June 1952.

Mjr/13/6

4 Cs.

Legal Department

Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950
section 4.

Resumption and regrant of land.

It appears from the Collectors report dated 19th August 1952 that land G. No. 70 which was originally Watan land was on the death of Laxman Ganesh Deshpande entered in the name of his daughter Sitabai. Sitabai transferred the land to her ~~grx~~ grandson Vishwanath Chintaman who sold it to Zelubai the present holder in 1946. The applicant V.P. Deshpande contends that the land should not have been transferred to the name of Sitabai in 1932, as he was the legal heir to the Watan, being the male member of the family. It is not clear from the papers whether this claim of the applicant is proved. But assuming that he is the legal heir to the Watan, the possession of Sitabai and her successors has been adverse to him since 1932 and whatever may be his claim, he has lost his right to the Watan land. (See Radhabai v. Anantrao, I.L.R. 9 Bom 198). It appears that the Revenue authorities had not also taken steps to evict Sitabai or her successors or to levy full rent from her. It would, therefore, be proper to hold that the land has ceased to be Watan land and no question o f its resumption or regrant arises. The applicant V.P. Deshpande may be informed that his claim to the land cannot be recognised. Government should, however, direct that full assessment should be levied in respect of the land from the person who may be in actual possession.

Sd/- J.R.Dhurandhar
o.c. 4/12

Additional Secretary to Government.

U.R. to R.D., No. 20354/A dated the 4th December 1952.

Mjr/13/6

4 Cs.

Legal Department.

Attention is invited to the Additional Secretary's Opinion No. 19284-A dated 19th November 1952. As pointed out in that Opinion the Watan lands will have to be re-granted to the holder of the watan on payment of the occupancy price and not to Shri Belagi of Uran. If the Whatandar pays the occupancy price and takes the re-grant, the question whether the rights of Shri Belagi are or are not affected is a matter to be settled between them through Court. If, however, the watandar does not pay the occupancy price, the land will have to be resumed and the rights of Shri Belagi, if any, wouldbe deemed to be extinguished on such resumption. It would not be correct to say that the order regarding the levy of kamal rent would be deemed to abate under sub-section (4) of section 3 of the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950, as the payment of such rent cannot be considered as an incident to watan. Since the Watandar would be entitled to re-grant on payment of the occupancy price, the question of his applying for compensation, as suggested in para 4 of the Collector's report, would not arise.

Sd/- J.R.Dhurandhar
o.c. 22/11

Additional Secretary to Government.

U.R. to R.D. No. 19646/A dated 24th November 1952.

Mjr/13/6
4 Cs.

Legal Department.

Bombay Paragana Kulkarni Watans (Abolition) Act, 1950

Section 6(1)

It appears that Sardar Raje R.R. Deshmukh of Raver who is the holder of the Pargana Watan is entitled to receive a sum of Rs. 3,176-3-10 as Cash allowance under the terms of the Sanad. A Nazarana of Rs. 265-3-10, is however, being recovered from him for the permission given to his late father to adopt without restriction as to family. In view of this Nazarana a sum of Rs. 2,911-0-0 is being actually paid to him. The question now raised is whether the compensation payable to him under section 6(1) of the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950, should be calculated on the basis of the original cash allowance or the sum which he is actually receiving at present.

2. Under section 6(1) of the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950, notwithstanding anything contained in any law, usage, settlement, grant, sanad or order, a sum equal to seven times the amount of the cash allowance due to a holder on the appointed day of a watan in respect of which a commutation settlement has been effected shall be paid to such holder. The levy ofNazarana for permission to adopt without restriction as to family amounts to reduction of the cash allowance to payable to the watandar in the present case is mentioned to be Rs.3,176-3-10 wouldbe immaterial in view of the opening words of section 6(1) of the Act, Consequently, what is actually paid to him as cash allowance, i.e., the original cash allowance minus the nazarang, wouldbe the amount on the basis of which the amount payable to him under section 6(1) will have to be calculated

Sd/- J.R.Dhurandhar
3/12

C.C.

Additional Secretary to Government.

U.R. to R.D. No. 20355/A dated the 4th December 1952.

Mjr/13/6

4 Cs.

Legal Department.

The view taken in Revenue Department note that the words "the total amount of the emoluments payable annually to the representative watandar" include only the akarni and potgi and not other allowances receivable by him is not correct. The word 'enoluments' has not been defined in the Bombay Pargana and Kulkarni Watans (Abolition) Act, 1950. But the word has to be construed in accordance with the scale allowance and judi Rules applicable to such emoluments. These rules and Wingate Rules published in Phadni's Watan Act at page 250 explain what meaning should be attached to the word. Rule 5 of the rules published under Government Resolution No. 7651, dated 28th December 1877 provides that the whole emoluments of village officers consisted of salary, potgi or extra allowance, special allowance or stationery allowance. Rule 7 and subsequent rules in Wingate's Rules provide how such allowances were to be assessed. The word 'emoluments' in section 7 of the Act will have to be given the meaning which it has in these rules. The statement in Revenue Department note that allowances other than akarni and potgi do not form part of the watandar's emoluments is misleading and is not correct. It is not supported by the rules in the Survey and Settlement Manual referred to in Revenue Department note. So also the reference to the commutation Government Resolution No. 5070, dated 30th May 1944 has no application.

Sd/- J.R.Dhurandhar
23/10

o.c.

Additional Secretary to Government

U.R. to R.D., No. 17625/A , dated the 24th October 1952.

Mjr/13/6

4 Cs.

Legal Department.

Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950. Sec. 4(1).

The term "full assessment" in section 4(1) of the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950, has not been used in order to include therein all rates and cesses such as water rate; but to denote the full amount of the ordinary land revenue leviable under the Code. The view taken by the Collector is not correct.

Sd/- J.R.Dhurandhar
5/12
Additional Secretary to Government

O.C.

U.R. to R.D., No. 20541/A, dated the 8th December 1952

Mjr/13/6

4 Cs.

Legal Department

In this case the Watandar's Associations of Dharwar and Bijapur have raised certain points in regard to the rights and liabilities inter se between the watandars and certain persons who are in possession of the watan lands as servants of the watandars, as permanent tenants and as their bhaubands. Under the proviso to sub-section (3) of section 3 of the Bombay Pargana and Kulkarni Watans (Abolition) Act, the rights of lawful alienees are saved and its is provided that they are not affected. It is for the Watandars' Association to decide whether the rights of the above alienees are saved by the proviso. As pointed out in Addl. Secy's opinion No 7948 dated 13th May 1952, if the alienations are lawful in the sense that the lands have ceased to be watan lands, no question of resumption will arise. If, however, they are lawful alienees who are interested in the payment of the occupancy price, they may pay such price and safeguard their alienations. But in any case it is not for Government to advise the Watandars how to deal with these alienees. The object of the Watandar's Association seems to obtain the opinion of Government for the purpose of evicting the aliensees. The matter is one between the watandars and their alienees and Government cannot decide the question in general terms without ascertaining the facts of each case.

Sd/- J.R.Dhurandhar

O.C. 12/11

Additional Secretary to Government.

U.R. to R.D. No. 18892/A dated the 13th November 1952.

Mjr/13/6

4 Cs.

Legal Department.

The question raised by the Collector of East Khandesh is whether the alienees of the life interest of a watandar are entitled to pay the occupancy price of the watan land to which the Bombay Pargana and Kulkarni Watans/(Abolition) Act, 1952, applies and whether the regrant of the land can be made in favour of such alienee. In U.R. No 7948 dated the 13th May 1952 it was stated that the rights of an out and out alienee are not affected by the abolition and the resumption of the watan under section 3. It was, however, added that on such abolition, the life interest of the watandar in the watan would cease to exist. It is no doubt true that under section 5(1) of the Bombay Hereditary Offices Act, 1874, it was open to a watandar to mortgage, charge, alienate or lease not beyond the term of his nautral life. The alienati n made by the watandar may, therefore, be valid for the life time of the watandar. In the case of the forfeiture of the life interest of a watandar, it has been held that it is at the discretion of the Collector to t ake the actual possession of the land and to let out to the highest bidder or to r ecover the full rent. (see Phadni's Watan Act, p. 114). It is true that at p 34 of Phadnis Watan Act, it is stated that the alienation made by the watandar holds good during his life time and is not affected by the forfeiture. But the forfeiture of the life interest of the watandar does not amount to the extinction of the watan (see Phadni's Watan Act, p. 114). But section 3(1) of the Bombay Pargana and Kulkarni Watans(Abolition) Act, 1950 provides that the watan shall be deemed to have been abolished and sub-section (4) provides that all incidents appertaining to the said watan are extingjished. The alienc of the life interest of the watandar cannot, therefore, clain that his rights in the watan property survive. It is true that the proviso to sub-section (3) provides that the resumption of the watan land does not affect the rights of

a.....

a lawful alience. So far as the rights of an alience of the life interest are concerned, this may therefore be construed as giving him a right to pay the occupancy price of the watan land which the holder is entitled to be regranted to him. The equitable principle embodied in section69 of the Indian Contract Act can be held to apply to the case. If such alienee is willing to pay the occupancy price, it may be accepted from him to keep his interest alive. The regrant would however be in the name of the holder and the name of the alienee who paid the price may be entered as the person who made the payment.

Sd/- J.R. Dhurandhar

O.C. 12/11

Additional Secretary to Government

U.R. to R.D. No. 18888/A dated the 13th November 1952.

Mjr/13/6

4 Cs.

Legal Department.

The revised draft Government Circular omits (i) the right of the permanent tenants prior to Regulation XVI of 1827 and life-interest-alienees to pay the occupancy price on behalf of the holder of the Watan and (ii)the cessation of Watan tenure of the lands held adversely for more than 12 years against the succeedin watandar without being resumed by Government.

With regard to omission (i) it appears that the permanent tenants and life-interest-alienees have a legal right to pay the occupancy price on behalf of the holder of the Watan to save their rights and when on such payment the regrant would be in favour of the holder of the watan, the acceptance of such payment would not be opposed to the scheme of the Act. The Revenue Department is advised to include it in the revised draft circular.

With regard to omission (ii) R.D.'s attention is invited to the Additional Secretary's opinion No.20354/A, dated 4-12-1952, which is supported by the High Court's decisions in Radhabai v/ Anantrao I.L.R. 9, Bom 437 and Tuka v. Ganu 32, B.L.R. 1398. Besides the Bombay Paragana and Kulkarni Watans(Abolition) Act, 1950, provides for eviction of only the holder of the watan on failure to pay the occupancy price and consequently it would be difficult to evict these holders whose rights have almost ripened into ownership by reason of adverse possession for more than 12 years against the succeeding watandar. R.D. is therefore advised to include this also in the revised draft circular so that all the controversial points might be decided once for all.

Sd/- J.R.Dhurandhar
24/12
Additional Secretary to Government.

o.c.

U.R. to R.D. No. 21855 A, dated the 26th Dec. 1952.

Mjr/13/6

4 Cs.

Legal Department

.The view taken by the Sec etary, Revenue Department is correct. Sub-section (2) of section 4 of the Bombay Pargana and Kulkarni Watans (Abolition) Act, 1950, provides that the occupancy of the land regranted under sub-section (1) shall not be transferred or partitioned by metes bounds without the previous sanction of the Collector and except on payment of such amount as the State Government, may by general or special order determine. In view of this provision, under Governme.t Resilution, Revanue Department, No. 4110/49, dated the 7th August 1950, it is provided that,-

(a) When conversion has been desired for sale of land for non-agricultural use, conversion of the Inam Tenure of the land may be permitted on payment of Nazrana equal to 50% of the market value of the land to be determined by the Collector etc.,

(b) When the conversion is desired for sale of land for agricultural purposes only, the conversion may be permitted-

(i) x x x

(ii) x x x

(iii) Subject to the payment of Nazrana up to 6 times the assessment of the land, exact multiple of assessment being fixed by the Collector having regard to the merits of each case.

Since the provision for the payment of Nazarana in terms of the market value of the land has been made by an executive order, it is competent for Government to modity those orders and to say that the payment of Nazrana shall be interms of assessment. It will also be competent for Government to specify the period within which the amount of Nazrana shall be payable. The period of the payment of such amount has not been statutorily fixed under section 4(2) of the Act . It is not necessary, therefore, to amendthe said Act to achieve the above purposes.

Sd/- J.R.Dhurandhar
23/8
Additional Secretary to Government.

O.C.

U.R. to R.D. No. 13880 , dated the 26th August, 1952.